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IN THE HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

WRIT PETITION. NO: 3081 **/ 2003**

PETITIONER : ABDUL HALEEM KHAN,
S/o Late Abdul Hakeem Khan,
Aged : 49 years,
R/o 9, Akbar Khan Chawl,
Opp: Missionn Hospital, Bilaspur
Distt: Bilaspur (CG)

P. R. No. 2933/03
Presented by shri Vivek Sharma
dated 23.09.03

-Vs-

RESPONDENTS :

1. State of Chhattisgarh,
Through Secretary (Tourism,
Culture & Religious Trusts) :
Mantralaya, D K S Bhawan, Raipur
(CG)

2. Abdul Mannan Khan,
S/o Abdulla Khan,
Aged about: 35 years,
R/o Village : Sargaon, Tehsil : Mungeli,
District : Bilaspur (CG)

3.Ku. Rana Parveen, D/o Abdulla Khan, Aged about : 37 years, Occ: Teacher, R/o Juni Line,
Near Santosh Bhojanalaya, Bilaspur
(CG)

4. Rahul Bajpayee,
S/o Shri Rohini Kumar Bajpayee,
Aged about : 44 years,
R/o Idgah Chowk,
Teh & Distt: Bilaspur (CG)

5. Rafique Ahmed Khan, S/o Masood Khan, Aged about : 70 years,

6. Samir Ahmed Khan,
S/o Rafique Ahmed Khan,
Aged about : 38 years,

Ansari.

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23/9/03
CLERK TO A.G. BILASPUR

शपथ आयुक्त
एस.के. शुक्ला
बिलासपुर (छ.ग.)
23/9/03
बिलासपुर तहसील कोर्ट

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R-5 & 6 R/o Juni Line, Bilaspur.
Presently residing at : Flat No. 113,
"Utkarsh Nirman" Mangalwari Bazar,
Sadar, Nagpur (Maharashtra)

R 7. The Collector,
Bilaspur Distt: Bilaspur (CG)

R 8. The Sub Registrar (Registration),
Composite Building,
Opp: Collectorate, Bilaspur (CG)

WRIT PETITION UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA :

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition No. 3443 of 2003

Intazmiya Committee, Jama Masjid (Wakf) Bilha

Versus

State of Chhattisgarh & others

&

Connected two Writ Petitions No. 3081/2003 & 4289/2004.

ORDER

Post for: 30.07.2007

Sd/-
Sunil Kumar Sinha
Judge

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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition No. 3443 of 2003

PETITIONER Intazmiya Committee, Jama Masjid (Wakf) Bilha through Firoz Ahmed (a member) aged about 40 years son of Abdul Karim, resident of Talapara, Bilaspur, Tah. & Distt. Bilaspur (C.G.)

Versus

RESPONDENTS

1. State of Chhattisgarh Through : Collector, Bilaspur
2. Collector, Bilaspur (C.G.)
3. Superintendent of Police, Bilaspur (C.G.)
4. Shri Abdul Manna Khan aged 35 years S/o late Abdulla Khan, resident of Village Sargaon, Distt. Bilaspur (C.G.)
5. Kumari Rana Parveen aged 37 years, D/o late Abdulla Khan, resident of Juni Line, Opposite Santosh Bhojnalaya, Bilaspur, Tah. & Distt. Bilaspur
6. Shri Rahul Kumar Bajpayee, aged about 44 years S/o Rohini Kumar Bajpayee, resident of Idgah Chowk, Bilaspur, Tah. & Distt. Bilaspur (C.G.)

Writ Petition No. 3081 of 2003

PETITIONER ABDUL HALEEM KHAN, S/o Late Abdul Hakeem Khan, Aged : 49 years, R/o 9, Akbar Khan Chawl, Opp: Mission Hospital, Bilaspur, Distt: Bilaspur (C.G.)

Versus

RESPONDENTS

1. State of Chhattisgarh, Through Secretary (Tourism, Culture & Religious Trusts), Mantralaya, D.K.S. Bhawan, Raipur (C.G.)
2. Abdul Mannan Khan, S/o Abdulla Khan, Aged about: 35 years, R/o Village : Sargaon, Tehsil : Mungeli, District : Bilaspur (C.G.)
3. Ku. Rana Parveen, D/o Abdulla Khan, Aged about: 37 years, Occ: Teacher, R/o Juni Line, Near Santosh Bhojanalaya, Bilaspur (C.G.)

4 Rahul Bajpayee, S/o Shri Rohini Kumar Bajpayee, Aged about : 44 years, R/o Idgah Chowk, Teh. & Distt : Bilaspur (C.G.)

5 Rafique Ahmed Khan, S/o Masood Khan, Aged about : 70 years

6 Samir Ahmed Khan, S/o Rafique Ahmed Khan, Aged about : 38 years, R-5 & 6 R/o Juni Line, Bilaspur, Presently residing at : Flat No. 113, "Utkarsh Nirman" Mangalwari Bazar, Sadar, Nagpur (Maharashtra)

7 The Collector, Bilaspur Distt : Bilaspur (C.G.)

8 The Sub-Registrar (Registration), Composite Building, Opp: Collectorate, Bilaspur (C.G.)

&

Writ Petition No. 4289 of 2004

PETITIONER Intazamiya Committee, Jama Masjid (Wakf) Bilha through Waheedullah Khan (a member), aged about 45 years, S/o late Ahmedullah Khan, resident of Talapara, Bilapsur, Tah. & Distt. Bilaspur (C.G.)

Versus

RESPONDENTS

1 State of Chhattisgarh, Through : Collector, Bilaspur (C.G.)

2 Collector, Bilaspur (C.G.)

3 Sub-Registrar (Registration) Bilaspur (C.G.)

4 President, Chhattisgarh Education Society C/o Chhattisgarh, H.S. School Chatapara, Bilaspur (C.G.)

5 Janab Rafiq Ahmed, aged about 75 years S/o late Janab Masood Khan, Flat No. 113, Utkarsh Nirman, Mangalwara Bazar, Sadar Nagpur (Maharashtra)

Appearance:

Shri Saifuddin Rajas, Advocate for the petitioner in W.P. No. 3443/2003 & W.P. No. 4289/2004.

Shri Arun Sao, Govt. Advocate for the State & other State respondents in all the Writ petitions.

Shri U.N. Awasthy, Sr. Advocate and Dr. N.K. Shukla, Sr. Advocate with Shri Dilip Dubey, Advocate for Rahul Kumar Bajpayee.

Shri Gautam Bhaduri & Ku. Sofia Khan, Advocates for the petitioner in W.P. No. 3081/2003 and also for the intervener in W.P. No. 4289/2004.

Shri K.A. Ansari, Sr. Advocate with Smt. Meera Ansari, Advocate for Rafique Ahmed Khan.

Shri B.L. Dembra, Advocate for the intervener- Wakf Board.

ORDER
(30.07.2007)

Sunil Kumar Sinha, J.

(1) Since these 3 petitions involve common questions for consideration, they are being disposed of by this common order. The facts of these cases are as follows:

Writ Petition No. 3081/2003 was filed on 23.9.2003 by Abdul Haleem Khan for the relief that respondent State be commanded to hold a high level inquiry into illegal alienation of the Wakf property by the sale-deed dated 13.12.2002 executed by Abdul Mannan Khan and Ku. Rana Parveen (respondents No. 2 & 3) in favour of respondent No. 4, Rahul Bajpayee. As an interim measure, he prayed that respondents No. 2, 3 & 4 be restrained from dispossessing the beneficiary of Wakf in question by using force or by any other means and they be further restrained from demolishing the supper structure existing over the said property. The petitioner contended that the plot bearing sheet No.14, plot No.19, area 0.245 hectares (26392 sq.ft.) situated in *Nazul* area of township of Bilaspur (hereinafter referred to as the disputed property) was a Wakf property. He pleaded that Haji Mohd. Akbar Khan and Haji Mohd. Masood Khan had executed a *Wakf-Alal-Auladnama* dated 20.4.1937, in which, this property was declared as a Wakf property described at serial No. 1 & 2 of Para-11 of the Wakf-deed and the same was being managed by its *Mutvalli*, Rafique Ahmed Khan (respondent No.5). According to the petitioner, the Wakf was for the benefit of the descendents and 1/3rd portion of the proceeds of the Wakf property was to be distributed among the *Gujaredars* (beneficiaries) but the aforesaid portion of the said property was sold by the said sellers to respondent No.4 in collusion with *Mutvalli*, therefore, the same was illegal, which needs an inquiry as above and also an interim protection, as prayed for.

(2) Writ Petitions No. 3443/2003 & 4289/2004 have been filed by Intazmiya Committee, Jama Masjid (Wakf) Bilha on 17.10.2003 and 24.09.2004. The former petition was filed for restraining the purchaser from carrying out any building operation or making construction on the spot as also for issuance of mandamus directing the State respondents to intervene in the matter and perform their duties under Section 28, 52, 54, 55, 85 & 88 of Wakf Act 1995 and extend appropriate help to the petitioner in protection of Wakf property. The later petition was filed for issuance of directions to the State respondents to mutate the *Nazul* records as also Patwari records and enter the name of the petitioner Committee with respect to property, which have been registered as Wakf property by the Wakf Board and notified in the final Gazette at serial No. 106 pages 2014 to 2017 with a direction to respondent No.2 (Collector) to make an inquiry into illegal sale of the Wakf property and to take appropriate action in this regard as also to restrain the private respondents not to enter into any transaction pertaining to the Wakf property and not to deal with the said property. The pleadings and grounds in these two petitions are almost similar. According to the petitioner Committee, they have been constituted by M.P. Wakf Board, Bhopal and are to look after the maintenance and management of the property dedicated to the above Wakf institution. They pleaded that the disputed property was a Wakf property as it was registered as the Wakf property along with many other properties in the year 1967 by the Wakf Board M.P., Bhopal in the wakf-register (Register-Aukaf) and the factum of registration was also notified under the provisions of Wakf Act by Gazette Notification in the M.P. Gazette Part III (1) dated 25.8.1989 vide page Nos. 2014 to 2017. They contended that since this property was a Wakf property, therefore, alienation of the property was not possible. However, the sellers, who are two of the successors of the executants of Wakf, did not take care of the law and the purchaser, taking undue advantage that the mutation was not affected, purchased the disputed property and started action of demolition and the acts of construction over the portion of it. It is in this situation, these petitions were filed for above relief(s).

(3) The State and its authorities have taken stand that in the revenue records, maintained by them, i.e. the *Nazul* maintenance *Khasra*, the disputed property was on the name of sellers and the same was not belonging to Wakf Board, therefore, they would not be responsible for any transaction of such property. Apart from the above, they have also taken preliminary objection regarding maintainability of the writ petition as almost similar Writ Petition No. 1716/2003 was disposed of vide order dated 27.6.2003 as also disputed question of facts are involved in this case, which would require evidence, both oral and documentary and the appreciation thereof, which cannot be undertaken by this Court while exercising writ jurisdiction under Article 226 of Constitution of India.

(4) The purchaser took stand that this property was not a Wakf property as the alleged wakf-deed dated 20.4.1937 was never acted upon and it appears to be only a piece of paper for want of implementation by executants and their descendents for long 56 years. The names of Akbar Khan and his descendents have been continued in revenue records as lessee of the said land, who have time to time sold the portion of said property to different persons but the same were never challenged by the petitioner. Vide Para-5 of the reply in Writ Petition No. 3081/2003, he specifically pleaded that the said Haji Mohd. Akbar Khan and Haji Mohd. Masood Khan have never bequeathed any property as alleged. He also denied the execution of *Wakf-Alal-Auladnama* on 20.4.1937 or any other date. According to his pleadings, the said property was through out treated as their own property and not as a Wakf property by Haji Mohd. Akbar Khan, Haji Mohd. Masood Khan and their heirs' respondents No. 5 & 6. The said properties were managed by them as their personal property and they have never managed it as the *Mutvallis'* as alleged. He further pleaded that the portions of such property were sold to many persons as follows:

1. Shri Mahendra Pradhan vide sale-deed dated 12.2.1980, Annexure R-4/6;
2. Shrimati Baljit Kaur vide sale-deed dated 29.6.1981, Annexure R-4/7;
3. Shri Mohammad Mazahul Haq vide sale-deed dated 10.5.1999, Anexure R-4/8;

4. Shri Abdul Karim Khan vide sale-deed dated 8.6.1999, Annexure R-4/9.

Basing on many factual aspects, this respondent has denied about nature of property to be the Wakf property and according to his contention, the property was a personal property and its sale was valid and perfect in all means, execution of which was followed by delivery of possession.

(5) Rafique Ahmed Khan and Samir Ahmed Khan (respondents No. 5 & 6 in W.P. No. 3081/2003) have also filed their return in this Writ Petition. Their preliminary objection is that after dismissal of the earlier Writ Petition No. 1716/2003, this subsequent Writ Petition would not be maintainable. According to them, the question whether a property, notified as a Wakf property was a Wakf property or not can only be decided by way of a civil suit and respondent No. 5 has already instituted proceedings before the M.P. Wakf Tribunal vide case No. 1381/96. They specifically pleaded that earlier an application No. 478 was filed by the then, Secretary of District Wakf Committee, Bilaspur Shri Mohammed Sharif on 28.1.1983 before the M.P. Wakf Board for registration of immovable properties of respondent No.5 as Wakf property in accordance with the alleged Wakf Deeds of 20.4.1927 & 21.4.37. This application was considered in meeting No.33 dated 4/5-12-83 by the M.P. Wakf Board and it was decided by the Board that as the purport and the purpose of the execution of the deeds was only to secure the properties and there was no dedication of the same for any pious, charitable or religious purpose recognized by Muslim law, therefore, the immoveable properties cannot be registered as Wakf property. They have filed the order dated 31.12.83 through which the above decision of the M.P. Wakf Board was communicated to the authorities and persons concerned as Annexure R/5-6/2 and in view of the above, according to these respondents, the notification dated 25.8.1989 becomes questionable. That is to say that they have also disputed the nature of property to be the Wakf property either *Wakf-Alal-Auladnama* or the absolute Wakf.

(6) The Chhattisgarh Wakf Board has filed intervention application. Their contention is that the property in question, is a property covered

under the Wakf deed dated 20.4.1937, which is a *Wakf-Alal-Auladnama*, therefore, it cannot be treated as a public Wakf property and Intazmiya Committee, Jama Masjid, Bilha cannot claim any right over this property. It has contended that whatever right has been acquired by Intazmiya Committee, it has been acquired by the Wakf deed dated 19.8.1940, in which, Jama Masjid, Idgah and certain other properties were included. So far as sale in question is concerned, the Board has specifically pleaded that since it was a property of *Wakf-Alal-Auladnama*, which is meant for benefit, maintenance and welfare of the *Wakif's* descendents, it cannot be alienated to third party. Therefore, transaction of such a property was illegal and void. Referring to many Sections of Wakf Act, the Board has contended that since the property is Wakf property, the parties may approach to the appropriate forum and the appropriate authority under the Wakf Act. That means, the Board is supporting the pleadings of petition of Abdul Haleem Khan, but for its maintainability, and is opposing the petition filed by Intazmiya Committee.

(7) During the course of arguments, learned counsel for the petitioner- Abdul Haleem Khan, argued that according Mohammadan Law, a *Wakf-Alal-Aulad* is valid and well recognized. Creation of a Wakf for the purposes of maintenance of the members of the *Wakif's* family and their descendents is also a charitable purpose. His submission was that as soon as the property is declared as a Wakf property, right of *Wakif* is extinguished and ownership is transfered to almighty, therefore, after creation of *Wakif*, neither the *Wakif* nor his descendents would have any right to alienate the property. He referred to ***AIR 1981 SC 798 (Radhakanta Deb and another –Vs- The Commissioner of Hindu Religious Endowments, Orissa); AIR 1978 SC 1362 (Bibi Siddique Fatima –Vs- Saiyed Mohammad Mahmood Hasan) & AIR 1971 SC 1691 (Ahmed G.H. Ariff –Vs- The Commissioner of Wealth Tax Calcutta.***

(8) On the contrary, learned counsel for Intazmiya Committee argued that since an entry was made in *Wakif* register and a notification was also published by the Government, the property became absolute *Wakif* property and descendents of the *Wakif* family will have no right or

interest over that property as everything attains finality after such declaration, entry and publication according to Wakf Act, 1995. He referred to various provisions of the Act.

(9) Learned Sr. Counsel appearing for purchaser argued that many disputed questions of facts have been raised in writ petition, which require evidence and due appreciation, therefore, this Court will not be able to adjudicate the same. Firstly, the validity and contents of Wakf deed itself is denied by the respondent as also the sellers and it has been contended by them that the disputed property was never treated to be the Wakf property by the *Wakif* or his family members, therefore, for recognition and declaration of private rights, writ Court will have no jurisdiction to entertain such questions. He referred to the decision rendered in the matter of ***Orissa Agro Industries Corporation Ltd. and others –Vs- Bharati Industries and others, AIR 2006 SC 198.***

(10) Learned counsel appearing for Rafique Ahmed Khan as also intervener- Wakf Board almost argued similar points, which they have raised in their counter affidavit and intervention application.

(11) The controversy, which appears to have been raised by the purchaser is as to whether a Wakf deed was executed by *Wakif* and was acted upon, in relation to the disputed property ?, and the inter-se controversy between two sets of petitioners is as to whether it was a *Wakf-Alal-Aulad* or it was an absolute Wakf, that is to say about the nature of Wakf, though they have contended that it was a Wakf property ? Therefore, the question would be whether such matters can be gone into in a writ petition for want of evidence and their appreciation ? , Whether the writ court would be the appropriate forum to make such declaration and to issue a direct command to the private or Government respondents in this regard ?, and further, whether according to legal character of the petitioners, such exercise is really required by this Court or on the basis of admitted position regarding existence of a Wakf as per pleadings in the writ petitions, the petitioners' forum lies somewhere else ?

(12) If we look into the provisions of Wakf Act, 1995. Sections 6, 7, 51 & 52 are the Sections, which deal with disputes regarding wakfs, power

of Tribunal to determine the disputes regarding wakfs and alienation of wakf property as also regarding recovery thereof. Sections 6, 7, 51 & 52 are quoted as under:

> "6. **Disputes regarding wakfs.**-(1) If any question arises whether a particular property specified as wakf property in the list of wakfs is wakf property or not or whether a wakf specified in such list is a Shia wakf or Sunni wakf, the Board or the mutawalli of the wakf or any person interested therein may institute a suit in a Tribunal for the decision of the question and the decision of the Tribunal in respect of such matter shall be final:
>
> Provided that no such suit shall be entertained by the Tribunal after the expiry of one year from the date of the publication of the list of wakfs.
>
> *Explanation.*- For the purposes of this section and section 7, the expression "any person interested therein," shall, in relation to any property specified as wakf property in the list of wakfs published after the commencement of this Act, shall include also every person who, though not interested in the wakf concerned, is interested in such property and to whom a reasonable opportunity had been afforded to represent his case by notice served on him in that behalf during the course of the relevant inquiry under section 4.
>
> (2) Notwithstanding anything contained in sub-section (1), no proceeding under this Act in respect of any wakf shall be stayed by reason only of the pendency of any such suit or of any appeal or other proceeding arising out of such suit.
>
> (3) The Survey Commissioner shall not be made a party to any suit under sub-section (1) and no suit, prosecution or other legal proceeding shall lie against him in respect of anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.
>
> (4) The list of wakfs shall, unless it is modified in pursuance of a decision or the Tribunal under sub-section (1), be final and conclusive.
>
> (5) On and from the commencement of this Act in a State, no suit or other legal proceeding shall be instituted or commenced in a Court in that State in relation to any question referred to in sub-section (1).
>
> **7. Power of Tribunal to determine disputes regarding wakfs.**-(1) If, after the commencement of this Act, any question arises, whether a particular

property specified as wakf property in a list of wakfs is wakf property or not, or whether a wakf specified in such list is a Shia wakf or a Sunni wakf, the Board or the mutawalli of the wakf, or any person interested therein, may apply to the Tribunal having jurisdiction in relation to such property, for the decision of the question and the decision of the Tribunal thereon shall be final:

Provided that –

(a) in the case of the list of wakfs relating to any part of the State and published after the commencement of this Act no such application shall be entertained after the expiry of one year from the date of publication of the list of wakfs; and

(b) in the case of the list of wakfs relating to any part of the State and published at any time within a period of one year immediately preceding the commencement of this Act, such an application may be entertained by Tribunal within the period of one year from such commencement:

Provided further that where any such question has been heard and finally decided by a Civil Court in a suit instituted before such commencement, the Tribunal shall not re-open such question.

(2) Except where the Tribunal has no jurisdiction by reason of the provisions of sub-section (5), no proceeding under this section in respect of any wakf shall be stayed by any Court, Tribunal or other authority by reason only of the pendency of any suit, application or appeal or other proceeding arising out of any such suit, application, appeal or other proceeding.

(3) The Chief Executive Officer shall not be made a party to any application under sub-section (1).

(4) The list of wakfs and where any such list is modified in pursuance of a decision of the Tribunal under sub-section (1), the list as so modified, shall be final.

(5) The Tribunal shall not have jurisdiction to determine any matter which is the subject-matter of any suit or proceeding instituted or commenced in a Civil Court under sub-section (1) of section 6, before the commencement of this Act or which is the subject-matter of any appeal from the decree passed before such commencement in any such suit or proceeding or of any application for revision or review arising out of such suit, proceeding or appeal, as the case may be.

51. Alienation of wakf property without sanction of Board to be void.-(1) Notwithstanding anything contained in the wakf deed, any gift, sale or exchange mortgage of any immovable property which is wakf property, shall be void unless such gift, sale, exchange or mortgage is effected with the prior sanction of the Board:

Provided that no mosque, dargah or Khangah shall be gifted, sold, exchanged or mortgaged except in accordance with any law for the time being in force.

(2) The Board may, after publishing in the Official Gazette, the particulars relating to the transaction referred to in sub-section (1) and inviting any objections and suggestions with respect thereto and considering all objections and suggestions, if any, that may be received by it from the concerned mutawalli or any other person interested in the wakf, accord sanction to such transaction if it is of opinion that such transaction is –

(i) necessary or beneficial to the wakf;

(ii) consistent with the objects of the wakf;

(iii) the consideration thereof is reasonable and adequate:

Provided that the sale of any property sanctioned by the Board shall be effected by public auction and shall be subject to confirmation by the Board within such time as may be prescribed:

Provided further that the Tribunal may, on the application of the aggrieved mutawalli or other person, for reasons to be recorded by it in writing, permit such sale to be made otherwise than by public auction, if it is of opinion that it is necessary so to do in the interest of the wakf.

(3) The utilization or investment of the amount realized by the sale or exchange mortgage of any property shall be made by the mutawalli subject to the approval of the Board, and where any amount has been raised by mortgage of any such property, the mutawalli or other person shall make repayment of the mortgage-debt and obtain a discharge of the mortgage-debt from the mortgage within such reasonable time as the Board may specify.

(4) Every approval given by the Board under sub-section (3) shall be communicated to the mutawalli and shall also be published in the manner prescribed.

(5) The mutawalli or any other person having an interest in the wakf who is aggrieved by the decision given under sub-section (3), may, within ninety days

from the date of communication to him of such decision or the publication of the decision, as the case may be, prefer an appeal to the Tribunal against such decision, and thereupon, the Tribunal may, after giving the appellant and the Board, a reasonable opportunity of being heard, confirm, modify or set aside such decision.

52. Recovery of wakf property transferred in contravention of section 51.-(1) If the Board is satisfied, after making any inquiry in such manner as may be prescribed, that any immovable property of a wakf entered as such in the register of wakf maintained under section 36, has been transferred without the previous sanction of the Board in contravention of the provisions of section 51, it may send a requisition to the Collector within whose jurisdiction the property is situate to obtain and deliver possession of the property to it.

(2) On receipt of a requisition under sub-section (1), the Collector shall pass an order directing the person in possession of the property to deliver the property to the Board within a period of thirty days from the date of the service of the order.

(3) Every order passed under sub-section (2) shall be served-

(a) by giving or tendering the order, or by sending it by post to the person for whom it is intended; or

(b) if such person cannot be found, by affixing the order on some conspicuous part of his last known place of abode or business, or by giving or tendering the order to some adult male member or servant of his family or by causing it to be affixed on some conspicuous part of the property to which it relates:

Provided that where the person on whom the order is to be served is a minor, service upon his guardian or upon any adult male member or servant of his family shall be deemed to be the service upon the minor.

(4) Any person aggrieved by the order of the Collector under sub-section (2) may, within a period of thirty days from the date of the service of the order, prefer an appeal to the Tribunal within whose jurisdiction the property is situate and the decision of the Tribunal on such appeal shall be final.

(5) Where an order passed under sub-section (2) has not been complied with and the time for appealing against such order has expired without an appeal having been preferred or the appeal, if any,

> preferred within that time has been dismissed, the Collector shall obtain possession of the property in respect of which the order has been made, using such force, if any as may be necessary for the purpose and deliver it to the Board.
>
> (6) In exercising his functions under this section the Collector shall be guided by such rules as may be provided by regulations."

(13) A plain reading of these Sections would show that if a dispute regarding wakfs, as are mentioned in Section 6, arises then there is forum for it, about which Section 7 makes specifications though with certain limitations and the Legislature has secured the rights of the parties in this regard. And in an admitted position, i.e. where the property is held to be the Wakf property, further impediments have been laid down, regarding its alienation, vide Section 51 of the Act, which clearly provides the alienation of Wakf property without sanction of Board to be void. The provisions of the Section is consistent with the object of the Wakf Act that the purpose of the Act is to make alienation of Wakf property more difficult and, therefore, under Section 51, it has been laid down that notwithstanding anything contained in the Wakf deed, any gift, sale, exchange, or mortgage of any immovable Wakf property shall be void unless effected with the prior permission of the Wakf Board. There are certain other provisions also. Likewise Section 52 provides that in case of any transfer of property in contravention to the provisions of Section 51, the Wakf Board is empowered to recover such property, under the provisions of this Section and send a requisition to the concerned Collector to obtain and deliver the possession of the Wakf property to it and the Collector is to act upon such application after duly following the procedure, laid down under Section 52. Vide sub-section (4) of Section 52, it has further been provided that any person aggrieved by the order of the Collector under sub-section (2) may file an appeal to the Tribunal within whose jurisdiction the property situate and the decisions of the Tribunal on such appeal shall be final. Therefore, it is clear that if the property is a Wakf property, and an alienation of the property has been made without sanction of the Board, that itself shall be void under Section 51 and possession has to be recovered, which shall be taken back by the

Board by availing the remedy of Section 52. There is no impediment for the Board to act in a particular nature of Wakf as the provisions are silent on the point and the Board will act only if the property is a Wakf property irrespective of an absolute Wakf or a *Wakf-Alal-Aulad*.

(14) In the present case, the Board itself has taken a plea that the property was a Wakf property, therefore, it was incumbent upon the Board to take necessary steps under Section 52 for the recovery of such property and a direct petition by the petitioners for such relief(s) would not be entertainable before the High Court.

(15) So far as arguments pertaining to the declarations are concerned, the remedy under Article 226 of the Constitution is an extraordinary remedy and is intended to be used for ensuring the observance of the law of the land. As settled by many decisions of the Supreme Court, the writ jurisdiction is not to be exercised to declare private rights of parties but to examine actions of State in public law domain. Therefore, a declaration to this effect that whether there was a Wakf and if it was a Wakf, it was *Wakf-Alal-Aulad* or an absolute Wakf, that is to say that what was the nature of the Wakf and what were the rights and interest of the private petitioner and respondents and declaration about such rights would not be the dominion of the writ court. It is more so because it would require evidence being disputed question of facts and in such situation, the matter cannot be entertain under Articale 226 of the Constitution. That is what the Supreme Court said in the matter of *Orissa Agro Industries Corporations Ltd.* (supra) and in the facts and circumstances, writ court would not be the appropriate forum to make such declarations and to act upon it for issuance of command against the private or Govt. respondents.

(16) Now the question is as to whether such an exercise is really required in these matters for the relief(s) prayed for according to the pleadings of the petitioners? Admittedly, according to both the petitioners of 3 writ petitions, as also the Wakf Board, the disputed property is a Wakf property. The only difference between them is that the petitioner-Abdul Haleem Khan contends, and is supported by the Board, that it was a *Wakf-Alal-Aulad*, whereas, the Intazmiya

Committee (Petitioners in other two writ petitions) contends that it was *Wakf-Aam* (absolute Wakf) as the property has been registered and a publication to this effect has also been made in the official Gazette of erstwhile State of M.P. as it then was. Therefore, according to the pleadings of all the petitioners, supported by Wakf Board, the disputed property is a Wakf property and they claim to be the *Mutwallis'* of that property and on this ground, they are claiming the relief(s), so far as Govt. respondents are concerned. If the property was a Wakf property according to the petitioners, admittedly, the alienation of that property would be void under Section 51 of the Wakf Act, 1995 and a remedy for protection of such property is available under Section 52 of the said Act. It is not the case of the petitioners that the proceedings under Section 52 were drawn in the prescribed manner as envisaged under the law rather they are praying for issuance of mandamus in this regard. The main relief(s) in W.P. No. 3081/2003 as quoted (supra) is for initiation of high level inquiry and in interim to protect the property, whereas the relief in two other writ petitions appears to be one in the nature of injunction to restrain the private respondents and also to direct the State respondents to act in accordance with law including to effect the mutation on their names. On their own showing, the petitioners have a remedy under the provisions of the Wakf Act as also under the local laws and in the facts and circumstances of these cases, the petitions filed under Article 226 of Constitution of India cannot be allowed for the relief(s) claimed theirin.

(17) Moreover, earlier to this, petitioner-Abdul Haleem Khan had filed another petition vide W.P. No. 1716/2003, referred to above, and has prayed for mutation in the *Nazul* records on the basis of alleged *Wakf-Alal-Aulad* dated 20th April, 1937 raising almost similar pleadings with relation to nature of the property. This petition was heard by Single Bench of this Court and as then stated by the counsel for the petitioner, that the mutation proceedings before the *Nazul* Officer was pending, this Court observed as follows and dismissed the petition :

> "The jurisdiction under Article 226 of the Constitution of India is very limited and it is extraordinary jurisdiction in which the Court is not required to go into the complicated facts and investigate into the matter. Moreover,

when the proceedings are pending before the competent authorities, the Court is not required to interfere with the affairs of those authorities.

Having regard to the facts and circumstances of the case, I am of the opinion that this petition is wholly misconceived and liable to be dismissed in limine and same is dismissed at the admission stage itself."

(18) For the foregoing reasons, and in view of the dismissal of the earlier writ petition, these petitions are also dismissed. However, the parties shall be at liberty to take recourse of law before the appropriate forum, which ever is available to them.

(19) No orders as to cost(s).

Sd/-
Sunil Kumar Sinha
Judge

vatti